

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**IN RE ELECTRONIC BOOKS ANTITRUST  
LITIGATION**) 11-md-02293 (DLC)  
) ECF Case

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This Document Relates to:

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**THE STATE OF TEXAS; et al.,**)  
)  
**Plaintiffs,**)  
v.) Civil Action No. 12-cv-03394 (DLC)  
**PENGUIN GROUP (USA) INC.;**)  
**HOLTZBRINCK PUBLISHERS, LLC**)  
d/b/a **MACMILLAN;** and )  
**APPLE INC.;**)  
**Defendants.**)

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**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT**

The States of Texas, Connecticut, Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin, the District of Columbia, and the Commonwealths of Massachusetts, Pennsylvania, Puerto Rico, and Virginia (the "Plaintiff States"), by and through their Attorneys General, respectfully submit this memorandum in support of their unopposed motion for leave to file a second amended complaint.

## **STATEMENT OF FACTS**

On April 11, 2012, sixteen States and Commonwealths filed suit against the defendants in the U.S. District Court for the Western District of Texas (the “Original Complaint”). Because the Original Complaint relied upon documents produced to the State of Texas during the course of its investigation under a statutory grant of confidentiality, the Original Complaint was filed Under Seal, and a Public Version of the Original Complaint was also filed with the Court. *See Tex. Bus. & Com. Code § 15.10.*

The next week, to correct the identity of one of the corporate Defendants, the sixteen States and Commonwealths amended their complaint to ensure that the correct entity was named as a Defendant (“First Amended Complaint”). No other changes were made in the First Amended Complaint. Again, to comply with the provisions of the Texas Statute, the First Amended Complaint was filed Under Seal, with a Public Version of the Complaint also filed with the Court.

Following the filing of the First Amended Complaint, this case was transferred by the Judicial Panel on Multidistrict Litigation to this Court.

## **ARGUMENT**

Because the First Amended Complaint constituted the Plaintiff States’ sole amendment as of right and more than 21 days have passed since the initial complaint was served, Plaintiff States are required to seek leave of the Court to file the Second Amended Complaint. *See Fed. R. Civ. P. 15(a)(2)* The Court “should freely give leave when justice so requires.” *Id.*

Plaintiff States respectfully submit that leave should be granted to file the Second Amended Complaint, for the following three reasons.

First, none of the named Defendants object to the filing of the Second Amended Complaint.

Second, the Second Amended Complaint adds 17 additional States and Commonwealths as Plaintiffs. If leave is not granted, these States and Commonwealths would be required to file a new case and copy-cat complaint in this Court, ask for the new case to be consolidated with the other related cases before the Court, and accomplish service of process upon the Defendants. This will unnecessarily burden the new plaintiff States and Commonwealths, the Defendants, and the Court, without any countervailing benefit.

Third, the Second Amended Complaint will **not** be filed under seal. The State of Texas has resolved the issues requiring the Original Complaint and First Amended Complaint to be filed under seal, as confirmed by Defendants' lack of opposition to this motion. Given the importance of the factual and legal issues presented in the e-books litigation, we believe that the interests of justice will be best served if the operative pleading, which will be available to the public, contains all of the factual allegations set forth by the Plaintiff States, without redaction.

## CONCLUSION

For the reasons set forth above, Plaintiff States' unopposed motion for leave to file the Second Amended Complaint should be granted.

Respectfully submitted,

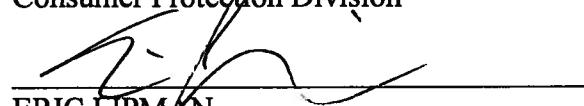
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ON BEHALF OF THE PLAINTIFF STATES**